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No. 552

In the Supreme Court of the United States

OCTOBER TERM, 1930

WILLIAM W. McBOYLE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The majority and dissenting opinions in the Circuit Court of Appeals (R. 171, 176) are reported in 43 F. (2d) 273, 276.

JURISDICTION

The judgment to be reviewed was entered on September 8, 1930. (R. 177.) Petition for certiorari was filed in this Court on November 17, 1930, and granted January 12, 1931, pursuant to Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (R. 187.)

QUESTION PRESENTED

In granting the writ this Court limited the argument and briefs to the question "whether the National Motor Vehicle Theft Act applies to aircraft." (R. 187.)

STATUTE INVOLVED

The National Motor Vehicle Theft Act (Act of October 29, 1919, c. 89, 41 Stat. 324, 325; U. S. C. Title 18, Sec. 408), so far as pertinent, provides:

> SEC. 2. That when used in this Act:
>
> (a) The term "motor vehicle" shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails;
>
> * * * * *
>
> SEC. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.
>
> * * * * *

STATEMENT

Petitioner was convicted in the United States District Court for the Western District of Oklahoma under an indictment charging him and another with transporting from Ottawa, Illinois, to Guymon, Oklahoma, an airplane which they knew had been stolen. (R. 2, 5.) Petitioner was sen-

tenced to serve three years' imprisonment and to pay a fine of $2,000. (R. 9.) The Circuit Court of Appeals for the Tenth Circuit, one judge dissenting, affirmed the judgment of conviction. (R. 176.)

This Court on January 12, 1931, granted a writ of certiorari, but directed that the argument and briefs be limited to the question "whether the National Motor Vehicle Theft Act applies to aircraft." (R. 187.)

SUMMARY OF ARGUMENT

Section 2 (a) of the National Motor Vehicle Theft Act provides that, when used in this Act, "the term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails." We maintain that the term "motor vehicle," as so defined, should be construed to include an airplane. This construction does not extend the words of the statute beyond their letter or add to them by inference or attribute to them a purpose which it is clear that Congress did not intend them to have.

An airplane is "self-propelled," and, of course, it is "not designed for running on rails." The definition of "vehicle" in the dictionaries include the following: "A conveyance" and "that in or on which anything is or may be carried." An airplane is a conveyance in which persons and things are carried. There is nothing in the context of this Act which shows that an airplane is not included

in the term "motor vehicle," and it is therefore unlike numerous other statutes relied upon by the petitioner. The provisions in regard to the word "vehicle" in Section 4, R. S., do not seem to be conclusive, as that section evidently was intended not to restrict, but to prevent restriction of the definition of that word.

None of the rules applicable to the construction of criminal statutes preclude our interpretation. "The admitted rule that penal statutes are to be strictly construed, is not violated by allowing their words to have full meaning, or even the more extended of two meanings, where such construction best harmonizes with the context, and most fully promotes the policy and objects of the legislature." *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170.

The construction which we present does not violate the rule of *ejusdem generis*, and, furthermore, some meaning must be ascribed to the general phrase, "any other self-propelled motor vehicle."

The legislative history of the Act does not show that it was not intended to apply to airplanes, although they were not specifically mentioned in the Act or in the reports of committees or in the debates. "But the question is not whether they were thought of for the purpose of inclusion but whether they were intentionally excluded from a description that on its face includes them." *Uravic* v. *Jarka Co.*, No. 32, October Term, 1930, decided January 5, 1931.

ARGUMENT

Section 2(a) of the National Motor Vehicle Theft Act provides:

> That when used in this Act—
>
> (a) The term "motor vehicle" shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails.

We maintain that the term "motor vehicle," as so defined, should be construed to include an airplane. This construction does not extend the words of the statute beyond their letter or add to them by inference or attribute to them a purpose which it is clear that Congress did not intend them to have.

An airplane is "self-propelled," and, of course, it is "not designed for running on rails." Even the dissenting judge in the court below said (R. 176):

> We may assume an airplane is a vehicle, in being a means of transportation.

The lexicographers' definitions of the word "vehicle" are sufficiently broad to include the airplane. Thus the Century Dictionary shows that the word "vehicle" is derived from the Latin *vehiculum*, meaning a carriage, conveyance. It defines the word as follows—

> 1. Any carriage moving on land, either on wheels or on runners; a conveyance. 2. That which is used as an instrument of conveyance, transmission, or communication.

Webster defines the word "vehicle" as follows:

> (1) That in or on which any person or thing is or may be carried, esp. on land, as a coach, wagon, car, bicycle, etc.; a means of conveyance.
>
> (2) That which is used as the instrument of conveyance or communication; * * *

The Standard Dictionary defines "vehicle" as follows:

> 1. That in or on which anything is or may be carried; especially, a contrivance with wheels or runners for carrying something; a conveyance, as a carriage, wagon, or car; specific., in law, any artificial contrivance used or capable of being used as a means of transportation on land.

An airplane runs partly on the ground but principally in the air. In it persons and things are carried.

It is true that the term "motor vehicle" has often been used as not including the airplane. In most of such instances mentioned in the petitioner's brief, it is the context which shows that the word was not intended to include the airplane. In the Act under consideration the context gives no such indication.

The provisions in regard to the word "vehicle" in Section 4, R. S. (U. S. C., Title 1, Sec. 4), do not seem conclusive. That section reads:

> The word "vehicle" includes every description of carriage or other artificial con-

trivance used, or capable of being used, as a means of transportation on land.

This section originated in the Act of July 18, 1866. (14 Stat. 178). It was apparently intended, not to restrict, but to prevent restriction of definition. At the time of its origin aircraft were, of course, practically unknown, and there could have been no intention to exclude airplanes from the operation of statutes in which the word "vehicle" occurred.

The petitioner places reliance upon the fact that Section 7 of the Air Commerce Act of May 20, 1926 (44 Stat. 572), provides that any definition of "vessel" or "vehicle" found in the navigation and shipping laws shall not be construed to apply to seaplanes or other aircraft. Although this section seems to us to throw little light on the problem under consideration, we submit that if it shows anything, it is that in passing that Act Congress felt that it was necessary, or, at least, desirable, to provide that the word "vehicle" should not apply to aircraft. In contrast, the Act under consideration made no such exclusion.

We consequently submit the natural meaning of the language used is to include the airplane, and that nothing in any other statute prevents the language from having this meaning. This meaning should then be attributed to the language in question unless some aids to construction other than the language itself prevent. We submit that they do not.

The dissenting judge in the court below based his conclusion largely upon the following reasoning (R. 176):

> The omission to definitely mention airplanes requires a construction that they were not included. Furthermore, by excepting vehicles running on rails, the meaning of the Act is clarified. These words indicate it was meant to be confined to vehicles that *run* but not on rails, and it did not extend to those that *fly*.

Although these matters may properly be considered, they hardly seem sufficient to restrict the meaning of the language used.

We do not regard any of the rules applicable to the construction of criminal statutes as fatal to our interpretation. In *Donnelley* v. *United States*, 276 U. S. 505, 512, this Court said:

> * * * The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment.

The applicable rule is thus stated in *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170:

> "The admitted rule that penal statutes are to be strictly construed, is not violated by

> allowing their words to have full meaning, or even the more extended of two meanings, where such construction best harmonizes with the context, and most fully promotes the policy and objects of the legislature."

Our argument does not conflict with the principles of construction applied in the cases upon which the petitioner chiefly relies, *Fasulo* v. *United States,* 272 U. S. 620, and *United States* v. *Noveck,* 271 U. S. 201.

Petitioner argues that the construction of the court below violates the rule of *ejusdem generis,* and the dissenting judge in the Circuit Court of Appeals agreed with this contention, being of the opinion that an airplane is not generally classified with "an automobile, automobile truck, automobile wagon" or "motor cycle," inasmuch as all of these vehicles travel only on the ground and an airplane flies. But, as the majority opinion said (R. 173):

> * * * It therefore serves the same general purpose as an automobile, automobile truck or motor cycle. It is of the same general kind or class as the motor vehicles specifically enumerated in the statutory definition and, therefore, construing an airplane to come within the general term "any other self-propelled vehicle," does not offend against the maxim of *ejusdem generis.*
>
> Furthermore, some meaning must be ascribed to the general phrase "any other self-

> propelled vehicle," which Congress wrote into the Act. It specifically enumerated all of the known self-propelled vehicles designed for running on land. It used the word "automobile," a generic term, which includes all self-propelled motor vehicles that travel on land and are used for the transportation of passengers, except those designed for running on rails. * * *

The reasoning of the petitioner is somewhat similar to that which was rejected in *Mason* v. *United States*, 260 U. S. 545, 554, wherein it was said:

> The rule is one well established and frequently invoked, but it is, after all, a rule of *construction*, to be resorted to only as an aid to the ascertainment of the meaning of doubtful words and phrases, and not to control or limit their meaning contrary to the true intent. It can not be employed to render general words meaningless, since that would be to disregard the primary rules, that effect should be given to every part of a statute, if legitimately possible, and that the words of a statute or other document are to be taken according to their natural meaning. Here the supposed specific words are sufficiently comprehensive to exhaust the genus and leave nothing essentially similar upon which the general words may operate.

See also *Mid-Northern Co.* v. *Montana*, 268 U. S. 45, 49–50; *Danciger* v. *Cooley*, 248 U. S. 319, 326; *Caminetti* v. *United States*, 242 U. S. 470, 487;

United States v. *Mescall*, 215 U. S. 26, 31; *Cutler* v. *Kouns*, 110 U. S. 720, 728; *United States* v. *Briggs*, 9 How. 351.

Petitioner also contends that the legislative history of the Act shows that it was not intended to apply to airplanes. It is true that airplanes were nowhere mentioned in the committee reports or the debates, but the same is substantially true of motor cycles,[1] which are specifically included in the Act.

It is probable that the draftsman of the bill and those in charge of it did not consider the theft of airplanes at that time; as airplanes were not then very common, most of them then belonging to the Government. But the difficulty which the States have in enforcing their laws against theft as applied to automobiles is equally applicable to the theft of airplanes in the rare instances where this occurs. We submit that the following language used by this Court in construing the word "seamen" in Section 33 of the Merchant Marine Act in *Uxavic* v. *Jarka Co.* (No. 32, October Term, 1930, decided January 5, 1931) is applicable to airplanes in the statute under consideration:

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[1] Motor cycles were casually mentioned in debate by only one person, and he was not a member in charge of the bill. The report of the Judiciary Committee of the House (Report 312, 66th Congress, 1st session) indicates that the primary purpose of the Act was to strike at the theft of "the cheaper cars," but of course the scope of the Act was not limited to them.

But the question is not whether they were thought of for the purpose of inclusion but whether they were intentionally excluded from a description that on its face includes them.

Respectfully submitted.

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FEBRUARY, 1931.

NOTE.—The above brief has been prepared in support of the majority opinion of the Circuit Court of Appeals. I can not persuade myself that that decision is correct, but have signed the brief because I believe the question is one which this Court should decide for the guidance of Congress.

THOMAS D. THACHER,
Solicitor General.

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